

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20 CV 1371

JAPANESE JUICES, LLC
A Delaware company

CASE No.

PLAINTIFF

v.

THE UNITED STATES OF AMERICA,
A government entity

DEFENDANT

COMPLAINT FOR DAMAGES UNDER THE FEDERAL TORT CLAIMS ACT

INTRODUCTION

COMPLAINT

Jurisdiction

1. This action is brought pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2679, 28 U.S.C. § 2671, 28 U.S.C. § 2674 and the Fourth and Fifth Amendments to the United States Constitution, 28 U.S.C. § 1331, § 2401(b), § 1346(b) and §1346(b)(1).

2. On May 31, 2018, Plaintiff (JAPANESE JUICES, LLC), was driving its company-owned vehicle and engaged in official corporate activity on that rainy afternoon in lower Manhattan, before this company's financial future was forever altered; after being recklessly struck by a United States Postal Service large box truck; which caused this company to lose the services of its founder and chief executive officer

(Frederick Piña); whom was also the operating motorist; from a large; highly lucrative new beverage contract; which it been trying to compete (and close) against its larger competitor; The Coca-Cola Company; and which had been tentatively valued at \$146 Million dollars (or potentially more). Something which only had remained possible, with the negotiation skills of this company's chief executive and which had been of the utmost priority and importance; being that its lead; and prospective principal client ("Delta Airlines, Inc."); at the time in question was in the midst of its re-negotiation with their previous business partner; and which had formed the very basis for such a new business opportunity to be taken from them; for this start-up company; in niche and specialized market; and known as Japanese Juices, LLC.

3. Six months have elapsed, all conditions precedent to a Federal Tort Claims Act have been met.
4. The venue is properly within this District under 28 U.S.C. § 2401(b) as the acts complained of had occurred within the Southern District of New York.

Parties

5. Plaintiff is a Delaware-founded, New York-operated; foreign limited liability company.
6. The United States of America is the appropriate defendant under the Federal Tort Claims Act.

Facts

8. On May 31, 2018, the Founder & CEO of the start-up beverage company, self-titled: Japanese Juices, LLC (and Operated by Frederick Piña), was driving his company-owned vehicle (a black sedan, 2017 Cadillac ATS), northbound on Sullivan Street; as Mr. Pina was readying to make a right turn on the rain-soaked roads; and corner of Spring Street; when on that fateful afternoon; a large box-truck that is owned and operated; by the United States Postal Service, had then violently struck and side-swiped the front left side of this said vehicle; and which had caused damages to both the said vehicle itself and to its driver and founder-owner/manager; Mr. Pina; whom tragically then required him to abandon all his business operations and be forced instead; into tending towards his medical needs; causing irreparable hard to his business and his company.

9. During that rainy afternoon, a large box had violently struck this company-owned car, while in the midst of business activity; and caused its company executive (Frederick Piña) internal medical injuries, which required substantial time off from his work duties; and which forced him to tend to both his personal injuries (and other family-related matters); in addition; to his loss of business an prospective client; Delta Airlines, Inc.

10. Due to the size of such a missed, highly lucrative beverage contract with the United States' 2nd-largest airline carrier, and the significantly fast-shrinking window of opportunity to be awarded; and ultimately win such a lucrative beverage contract (from The Coca-Cola Company); and which Plaintiff has now forever missed this rare opportunity to recapture and to bid again; has caused Japanese Juices, LLC to suspend operation after its business opportunity therefore collapsed; once again; as a direct result of its founder and chief executive officer; being forced off against his will; into subsequent medical treatments, and a battery of other physical therapy sessions; which were medically required and directed by his prior counsel, in addition to his mental health and emotionally suffered damages; being repeatedly ignored by the adjuster's office; which caused an even more devastating blow; whom as the sole guardian and steward of this new start-up beverage company; had so been readily depended upon.

First Cause of Action

26. Japanese Juices, LLC is a rather unique business that's strategically aimed at a unique market sector, namely the commercial airline space; whereby Japanese Juices, LLC; had been carefully engaged in a year's long highly confidential; highly sensitive negotiation with the United States' 2nd largest airline carrier ("Delta Airlines, Inc."), of which is a publicly-traded; highly-respected and highly-reputable American legacy corporation; with its worldwide headquarters based and located within Atlanta, Georgia.

27. Under the Federal Torts Claims Act, the defendant, United States of America; is fully liable for the above-described actions.

Second Cause of Action

28. The actions and conduct of the defendant, the United States of America, have also violated the rights of JAPANESE JUICES, LLC; to be free from tortious interference.

29. This defendant acted with recklessness disregard for the public safety of its lawfully required traffic laws; and/or the safety of motorists, and with callous indifference; and its absolute disregard for the rights of the Plaintiff; and its commercial damages (and that of its company executive); which were painfully sustained personally and otherwise; Japanese Juices, LLC moves this Court for prayer for in relief; of the said losses.

Damages

The New York Police Department's police report places all legal liability and is the at-fault party in this matter, as supported by attached documentation; of which were the hands of the United States Postal Service, as further evidenced; by this attached local government report (See Attached, "EXHIBIT A"). In addition, corporate communications between the Plaintiff (JAPANESE JUICES, LLC) and Delta Airlines, Inc. with its senior executives; fully display the length of those sensitive negotiations and the monetary value which had been proposed of such a large and exclusive beverage contract; which was a significant loss of business; solely again; because of the operating negligence and absolutely reckless actions of the defendant and its chief adjuster; to rectify or remedy those losses (See Attached, "EXHIBIT B").

Furthermore, in printed communications with the Nation Tort Claim officer in their St. Louis, Missouri headquarters; Plaintiff (JAPANESE JUICES, LLC) had repeatedly pleaded with the adjuster for basic relief in negotiating a reasonable resolution to this matter; which was repeatedly and callously rebuffed and denied; despite the evident necessity of his medical and/or physical therapy requirements; which were demanded upon by the Plaintiff's company executive; and whom was unable to continue his negotiations with Delta Airlines; or even negotiate for those basic losses; from the company's loss commercial insurance policy and its subsequent damages to its lost; rare business opportunity with Delta Airlines, Inc.

Lastly,

In addition to the emotional trauma and intentional infliction of psychological stress, the U.S. Postal Service has refused to cover the storage fees which have been incurred through Potamkin Cadillac; and now stands at \$40,000 dollars and climbing; in addition to the repair costs of \$5,000 dollars; of which I am unable to accept their measly offer to settle for a mere \$5,000 dollars; because it doesn't cover those incurred car storage fees; and leaves me with nothing to cover the lost commercial insurance policy through Progressive, and I cannot legally drive in New York City; without insurance; thus; the U.S. Postal Service is placing me in the uncomfortable situation of choosing between "resolving" this matter, and breaking the traffic laws of New York State; by driving with no insurance.

The United States Postal Services seems to have no regard for the real lives of their affected victims, as they don't care about the personal debts incurred to make ends while tending to medical problems and/or business losses; despite the frequent please from the Plaintiff for a common-sense resolution that would be more than reasonable for both parties.

This arrogance on the part of the federal government is what has forced this company to take legal action and with legally supported documents; to pray and find any sort of accountability for the consequences of their actions. By the time this Court reads these words, (See, "EXHIBIT C"); this company car will most have already been sold at auction for the massively incurred debts of \$40,000 (and still climbing).

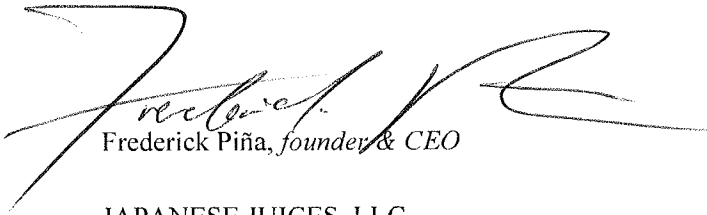
Prayer for Relief

WHEREFORE, Plaintiff, JAPANESE JUICES, LLC; therefore respectfully requests a judgment against the Defendant:

- a. compensatory damages in the sum of one hundred and forty-six million United States dollars, and;
- b. its incurred attorney fees, and;
- c. \$6,000 dollars for reimbursement of a loss commercial insurance policy, and \$7,000 dollars for luxury car repairs costs, incurred storage garage costs; and;

- d. \$200,000 dollars of lost company income; and;
- e. such other relief as this Court deems just and proper.

Respectfully Submitted,



Frederick Piña, *founder & CEO*

JAPANESE JUICES, LLC

LAW DEPARTMENT
NATIONAL TORT CENTER



CERTIFIED NO. 70180680000036795930
RETURN RECEIPT REQUESTED

August 27, 2019

Mr. Frederick Pina
296 Ninth Avenue
New York, NY 10001

Re: Your Administrative Claim
Date of Incident: May 31, 2018

Dear Mr. Pina:

This is in reference to the administrative claim filed on your behalf under the provisions of the Federal Tort Claims Act as a result of alleged injuries and damages sustained in a motor vehicle accident in New York, NY on May 31, 2018.

As you know, the Postal Service is not legally obligated to pay all losses which may occur. In adjudicating a claim, we are guided by all the information available to us, including the information a claimant submits and reports of our personnel or any other person acquainted with the facts. That being said, the Postal Service offered \$5,222.37 in full and final settlement. You rejected said offer.

As previously stated, as this accident occurred in New York, the governing law is the New York no-fault insurance law, N.Y. Insurance Law §§ 5101-5108. The New York no-fault insurance law exempts any person covered by that law from being subjected to an action by or on behalf of any other covered person for recovery for non-economic loss, except in the case of a serious injury, or for basic economic loss. N.Y. CLS Ins § 5104(a) (2002). You are a covered person under the no-fault law. See N.Y. CLS Ins § 5102(j). The United States is also a covered person under the no-fault law. Patrello v. United States of America, 757 F. Supp. 216, 220 (S.D.N.Y. 1991). To the extent you seek to recover "basic economic loss" as that term is defined in N.Y. CLS Ins § 5102(a) (2002), such loss is not recoverable in this case. Moreover, it is our opinion that based on the medical documentation provided to date, you have not suffered a "serious injury" as a result of this accident, as that term is defined in N.Y. CLS Ins § 5102(d) (2002), such as to entitle you to recover for non-economic loss.

While we regret any injury you may have sustained, we cannot accept legal liability for the alleged damages. We are hereby denying your claim.

1720 MARKET STREET, ROOM 2400
ST. LOUIS, MO 63155-9948
TEL: 314/345-5820
FAX: 314/345-5893

- 2 -

Regulations require us to inform you that if you are dissatisfied with the final action on your claim, you may file suit against the United States of America in an appropriate United States District Court not later than six (6) months from the date of mailing this letter, which is the date shown above.

Postal Service regulations further provide that prior to the commencement of suit and prior to the expiration of the six-month period allowed for filing suit, you have the right to file a request for reconsideration of your claim. To be timely filed, the request must be in writing and received in this office within the six-month period. Upon the timely filing of a request for reconsideration, the Postal Service will have six months to act upon the request. For additional information, see 39 C.F.R.

§ 912.9. A request for reconsideration should state the reasons you disagree with the Postal Service's decision and should be accompanied by any additional information and citations of law that she wishes to submit in support of his position.

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly A. Herbst". The signature is written in a cursive, flowing style.

Kimberly A. Herbst
Supervisor, Tort Claim Examiner/Adjudicator

cc: Mark Tam
Tort Claim Coordinator
File No. 110-18-00397644A

EXHIBIT A

MV-104AN (7/11)

AMENDED REPORT

5	51	1010	<input checked="" type="checkbox"/> VEHICLE 1 <input checked="" type="checkbox"/> VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN	State of Ir
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USE
COVER
SHEET
P

Right Turn (same dir) : MV-2018-001-001323

Reporting Officer : POM CHAZ A TURNER

Reviewing Officer : LT ROBERT MURRAY Reviewed Date : 05/31/2018 20:24

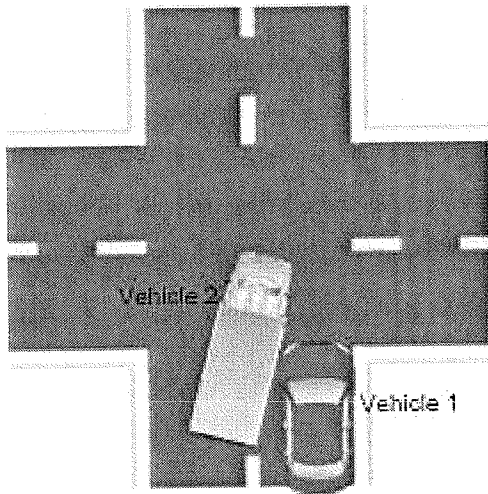
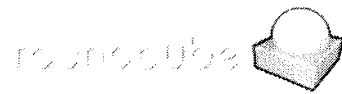


EXHIBIT B

Subject **Re:**
From Ausband, Allison <Allison.Ausband@delta.com>
To Japanese Juices ® <info@japanesejuices.com>
Cc Berry, Brian S <Brian.S.Berry@delta.com>
Date 2019-07-28 15:54



Thanks Frederick. We will keep you in mind as we move forward with our beverage strategy.

Sent from my iPhone

On Jul 26, 2019, at 3:31 PM, Japanese Juices ® <info@japanesejuices.com> wrote:

Hi Allison,

Is there still an opportunity to grow with Delta? I'm still seeking a large partner to distribute our products through.

Best,

- Frederick

(646) 498-5070

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www.japanesejuices.com

Subject **RE:**
From Berry, Brian S <Brian.S.Berry@delta.com>
To Japanese Juices ® <info@japanesejuices.com>
Date 2018-11-08 12:30



Good morning Frederick.

Thanks for sharing the samples. While you have a great product and the business has potential, at this time we are not going to pursue a partnership due to other priorities for our team. Please continue to stay in touch as things can change quickly in this space, and please let me know how things progress for the company.

Thanks - BB

From: Japanese Juices ® [mailto:info@japanesejuices.com]
Sent: Wednesday, November 07, 2018 10:27 AM
To: Berry, Brian S <Brian.S.Berry@delta.com>
Subject:

Good Morning Brian,

I'm following up with potential clients today. Just wanted to touch base and see where you and Delta are with regards to any possible partnerships and/or investment with us ? I know that you're a large organization and nothing happens overnight. However, we are looking for 8M in order to have a year's long runway and be able to produce our first 15 million cans of product.

Again, as previously shown in our projections sheet; we believe this will translate into our first \$150 Million in gross profits.

With aggressive marketing and a streamlined distribution system in place, I believe this business can go to the next level.

I would like to know if there's any real potential with Delta ? Or if should focus my efforts and energy elsewhere ?

Thank you again for giving us a chance. We're just looking to grow and improve our evolutionary curse as a company.

Best,

-- Frederick

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www.japanesejuices.com

Subject **Re:**
From Ausband, Allison <Allison.Ausband@delta.com>
To Japanese Juices ® <info@japanesejuices.com>
Date 2019-11-15 11:33



Not at this time Frederick but our Beverage leader has your information. Allison

Sent from my iPhone

On Nov 15, 2019, at 7:59 AM, Japanese Juices ® <info@japanesejuices.com> wrote:

Good morning Allison,

Any new opportunities with Delta on beverage strategy?

Thank you!

-- Frederick

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www.japanesejuices.com

EXHIBIT C

NEW YORK
STATE OF
OPPORTUNITY
Department of
Motor Vehicles

New York State Department of Motor Vehicles

NOTICE OF LIEN AND SALE

Under Sections 184 and 201 of the Lien Law of the State of New York

TO: OWNER: JAPANESE JUICES LLC PINA D.FREDERICK/JAPANESE
296 NINTH AVE 296 9TH AVE JUICES LLC
NEW YORK NY 10001 NEW YORK NY 10001

TO: LIENHOLDER: NONE

[] Please check if there are additional lienholders and attach a list of their name(s) and address(es)

For titled vehicles and boats, you may obtain lien and title information by contacting the Department of Motor Vehicles, Public Services Bureau, Albany, New York 12228-0232. A fee of \$5 per vehicle or boat must be submitted with each request. Lienholder information on non-titled vehicles is available from the appropriate County Clerk.

Please take notice that POTAMKIN CAD, BUICK, CHEV GEO LTD hereby claims a lien
(GARAGEMAN)
on the following motor vehicle or boat in the garageman's possession under section 184 of the Lien Law of the State of New York.

VEHICLE (HULL) IDENTIFICATION NUMBER: 1G6AG5RX2H0175524
YEAR: 2017
MAKE: CADILLAC MODEL: ATS
ESTIMATED VALUE: \$18000.00

The Nature of the lien (towing and/or daily storage charges listing number of days and cost per day) with an itemized statement of the claim, the date it was due, and the total amount due is listed below. If repairs are claimed, a copy of the invoice which itemizes the cost of parts and labor is attached.

Storage from 05/30/18 to 02/07/20 for 619 Days at \$ 75.00 per day 46425.00
Postage, Advertising, Investigation and Documentation Fees 300.00

DATE ORIGINAL CLAIM WAS DUE: 02/17/2020 Total Amount Due \$46725.00

An additional lien is claimed for storage charges from 02/08/2020 to the date of payment or sale and for charges incurred in enforcing this lien.

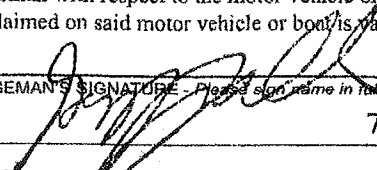
You may redeem this motor vehicle or boat on or before 02/17/2020 (date must be at least 10 days from the service of this notice)

Otherwise, the motor vehicle or boat will be advertised for sale at public auction on:

DATE: 03/11/2020
TIME: 2:15PM
PLACE: 706 11TH AVE NEW YORK NY 10019
BY: I. BELENSON & CO., INC. (718) 376-6161 (800) 376-6101
(AUCTIONEER) ZH4817

If you dispute the validity or the amount of this lien, you are entitled to bring a court proceeding under Section 201-a of the Lien Law within 10 days of service of this Notice of Lien.

I am the garageman with respect to the motor vehicle or boat described in this notice. To the best of my knowledge and belief, the facts stated in this notice are true, the lien claimed on said motor vehicle or boat is valid, and the debt upon which such lien is founded remains unpaid.

X  2/07/2020 GEORGE SPALLINA, VICE PRES
(GARAGEMAN'S SIGNATURE - Please sign name in full) DATE (GARAGEMAN'S NAME - Print)
706 11TH AVENUE NEW YORK NY 10019
(GARAGEMAN'S ADDRESS - Print)

If signing for a corporation, please print your full name, address and title.

IMPORTANT: False statements are punishable under Section 392 of the Vehicle and Traffic Law and Section 210.45 of the Penal Law.



Potamkin

706 11th Avenue, New York, NY 10019



DCA # 1339

January 21, 2020

Japanese Juices LLC
Attn: Frederick Pina
296 Ninth Avenue
New York NY 10001

Dear Frederick Pina

Please be advised that your 2017 Cadillac ATS Vin#1G6AG5RX2H0175524 was brought into our shop for an estimate. We have been waiting for you to either proceed with repairs and or remove your vehicle. Since we have not heard from you we have no choice but to notify you that storage has started as of May 30, 2018 at a rate of \$75.00 per day. Please make arrangements to make payment of storage up to date, along with DMV/Clerical fees of \$300.00.

Be advised that 10 days from the mailing of this notice we will file a Garageman's Lien Against your vehicle which may directly result in the auction of the vehicle to reclaim the money due, plus any additional funds spent in enforcing the lien under the NYS Lien Law Sec, 184.

Contact us as soon as you receive this notice. This will allow us to resolve this matter promptly. Failure to contact us will result in us enforcing our lien policy.

Sincerely,

George Spallina
Vice President